

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK ANTHONY NEWTON,

Defendant.

Case No. 2:13-CR-00398-APG-GWF

CERTIFICATE OF APPEALABILITY

I previously granted in part and denied in part defendant Mark Anthony Newton's § 2255 motion. ECF No. 67. In my order, I did not address whether to grant a certificate of appealability. *See* R. 11 Governing § 2255 Cases in the U.S. Dist. Cts. ("The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."). "The standard for a certificate of appealability is lenient." *Hayward v. Marshall*, 603 F.3d 546, 553 (9th Cir. 2010) (en banc), *overruled on other grounds by Swarthout v. Cooke*, 562 U.S. 216 (2011). A petitioner is required to demonstrate only "that reasonable jurists could debate the district court's resolution or that the issues are adequate to deserve encouragement to proceed further." *Id.* (citation omitted). The standard "requires something more than the absence of frivolity but something less than a merits determination." *Id.*

Reasonable jurists could debate whether a Hobbs Act robbery is a crime of violence under § 924(c) and whether Nevada robbery is a crime of violence. *See* ECF No. 74 at 7-8. Thus, I grant Newton a certificate of appealability on those two issues.

IT IS THEREFORE ORDERED that Newton is **GRANTED a certificate of appealability** on the issues whether a Hobbs Act robbery is a crime of violence under § 924(c) and whether Nevada robbery is a crime of violence.

DATED this 7th day of September, 2017.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE